

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:16-CV-35-D

JESSE H. JAMES,

Plaintiff,

v.

GUARDIAN FALL PROTECTION, INC.,
et al.,

Defendants.

ORDER

On February 4, 2016, Jesse H. James (“James” or “plaintiff”) moved to remand the action. James, a North Carolina citizen, argues that defendants Hillary Hawkins, Annette Perales, and David Bollenbacher are also North Carolina citizens and therefore defeat complete diversity. See [D.E. 24] 2; see also [D.E. 25] 3–18; cf. 28 U.S.C. § 1332(a)(1). On February 25, 2016, various defendants (including Hawkins, Perales, and Bollenbacher) filed a memorandum in opposition to James’s motion to remand. See [D.E. 27] 3–17.¹ Defendants concede that Hawkins, Perales, Bollenbacher, and James are citizens of North Carolina, but they allege fraudulent joinder. See id. On March 10, 2016, James replied. See [D.E. 36].

The court has reviewed the record, North Carolina law, and the arguments concerning fraudulent joinder under the governing standard. See, e.g., Marshall v. Manville Sales Corp., 6 F.3d 229, 232–33 (4th Cir. 1993); Mayes v. Rapoport, 198 F.3d 457, 461 (4th Cir. 1999); Hartley v. CSX Trans., Inc., 187 F.3d 422, 424–25 (4th Cir. 1999); Sampson v. Leonard, No. 4:10-CV-121-D, 2011

¹ On March 17, 2016, defendants filed an amended memorandum. See [D.E. 30].

WL 129634, at *2–3 (E.D.N.C. Jan. 12, 2011) (unpublished); Capparelli v. AmeriFirst Home Imp. Fin. Co., 535 F. Supp. 2d 554, 559–61 (E.D.N.C. 2008). Defendants have failed to “show that the plaintiff cannot establish a claim [against Hawkins, Perales, and Bollenbacher] even after resolving all issues of law and fact in the plaintiff’s favor.” Hartley, 187 F.3d at 424.

In sum, plaintiff’s motion to remand [D.E. 24] is GRANTED. Plaintiff’s request for attorney’s fees is DENIED. Defendants’ motion for extension of time to file answer [D.E. 28] is DENIED AS MOOT. The action is remanded to Wayne County Superior Court.

SO ORDERED. This 5 day of April 2016.



JAMES C. DEVER III
Chief United States District Judge